

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

NEWCOMB CHILD DEVELOPMENT
CENTER and ANDREA CANNON
Respondents

Case No.: I-00-40443

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 29 Chapter 3 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-40443) served December 31, 2001, Respondents Newcomb Child Development Center and Andrea Cannon were charged with the following violations: 29 DCMR 317.10 for allegedly failing to comply with a child development center program requirements¹; 29 DCMR 316.2 for allegedly failing to maintain required child staff ratios (teacher and teacher’s aide or assistant not present at all times)²; 29 DCMR 316.1 for allegedly

¹ 29 DCMR 317.10 provides: “When in use, there shall be a minimum of two feet (2’) between each cot and aisle space of not less than two feet (2’) between rows.”

² 29 DCMR 316.2 provides: “There shall be a teacher, who may also be the director, and an assistant teacher or aide for each group at all times. In part-day programs (up to four (4) hours per day), a volunteer may be substituted for an assistant teacher or aide. During non-peak hour[s] (before 8:30 a.m. and after 4:30 p.m.), an assistant teacher may substitute for a teacher.”

failing to maintain required child staff ratios (exceeding child group size)³; and 29 DCMR 315.2(a) for Director's alleged failure to provide adequate administration and supervision of child development facility.⁴ The Notice of Infraction alleged that these violations occurred on November 27 or December 5, 2001, and sought a fine of \$200 for the alleged violation of 29 DCMR 317.10; \$1,000 for the alleged violation of 29 DCMR 316.1; \$500 for the alleged violation of 29 DCMR 316.2; and \$50 for the alleged violation of 29 DCMR 315.2(a), for a total fine sought of \$1,750.⁵

On January 10, 2002, Respondents, through counsel, entered pleas of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3) to the charges set forth in the Notice of Infraction. Respondents also requested a continuance of the previously scheduled hearing date of February 7, 2002, which, upon the Government's consent and for good cause shown, was granted.

³ 29 DCMR 316.1 provides: "The size of any one (1) group of children shall not exceed that specified in the following chart for each age group:

| AGE | MAXIMUM SIZE OF GROUP | CHILD-ADULT RATIO |
|-----------------------------------|----------------------------------|------------------------------|
| 2 years to 2 years, 6 months | 8 | 4 to 1 |
| 2 years, 6 months through 3 years | 16 | 8 to 1 |
| 4 years | 20 | 10 to 1 |
| 5 years | 25 | 15 to 1 |
| 6 years through 14 years | 30 | 15 to 1" |

⁴ 29 DCMR 315.2(a) provides: "The director shall be responsible for supervision and administration of the child development center, including the following: (a) Selection of qualified staff and supervision of that staff to ensure that a child development program, as required by this chapter, is provided[.]"

⁵ With respect to the alleged violation of 29 DCMR §§ 317.10 and 316.1, Respondents were charged as a second offenders. As such, Respondents are subject to twice the authorized fine for first-time offenders. *See* 16 DCMR §§ 3201.1(b)(2) and 3201.1(c)(2).

On February 27, 2002, the Government filed a notice with this administrative court representing that the parties had reached an agreement to resolve this matter without the need for an evidentiary hearing. Pursuant to this agreement: (1) Respondents would seek leave to amend their pleas of Deny to the charges set forth in Notice of Infraction (No. 00-40443) to pleas of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02; (2) Respondents would pay \$100 for their admitted violation of 29 DCMR 317.10 and \$500 for their admitted violation of 29 DCMR 316.1, for a total of \$600; (3) the Government would seek leave to dismiss the “repeat violator enhancements” as applied to the charges of 29 DCMR §§ 317.10 and 316.1; and (4) the Government would recommend a suspension of the authorized fines for the remaining violations of 29 DCMR §§ 316.2 and 315.2(a).

II. Findings of Fact

1. At times relevant herein, Respondent Newcomb Child Development Center (“Newcomb”) operated as a child development center (License # 909013) at 333 H Street, N.E. At all times relevant herein, Respondent Andrea Cannon served as the director of Respondent Newcomb. Respondent Cannon does not currently serve as the director of Respondent Newcomb.
2. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 317.10 at the 333 H Street, N.E. facility on November 27, 2001.
3. On November 27, 2001, Respondents failed to have at least two feet (2’) of space around certain cots utilized by children attending the facility. The

Government acknowledges, however, Respondents' on-going efforts to train its staff as to the requirements of 29 DCMR 317.10.

4. Respondents were previously found liable for violating 29 DCMR 317.10 on April 26, 2000. *DOH v. Newcomb Child Development Center*, OAH No. I-00-40096 at 3 (Final Order, June 28, 2000). The Government has advised this administrative court that this violation did not occur at the 333 H Street, N.E. facility, and, as a result, has requested a dismissal of the repeat offender enhancement of this charge.
5. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 316.2 at the 333 H Street, N.E. facility on December 5, 2001.
6. On December 5, 2001, Respondents failed to have a qualified teacher and an assistant or aide for each group of children at all times. The Government has acknowledged, however, Respondents' efforts to attempt to provide coverage during the unexpected staff shortage on the day of the violation. As a result, the Government has recommended that the authorized fine for this violation be suspended.
7. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 316.1 at the 333 H Street, N.E. facility on December 5, 2001.
8. On December 5, 2001, Respondents maintained an enrolled group size of twelve (12) children aged 2 to 2-1/2 years old.

9. Respondents were previously found liable for violating 29 DCMR 316.1 on April 26, 2000. *DOH v. Newcomb Child Development Center*, OAH No. I-00-40096 at 3 (Final Order, June 28, 2000). The Government has advised this administrative court that this violation did not occur at the 333 H Street, N.E. facility, and, as a result, has requested a dismissal of the repeat offender enhancement of this charge.
10. By their plea of Admit with Explanation, Respondents have admitted violating 29 DCMR 315.2(a) at the 333 H Street, N.E. facility on December 5, 2001.
11. On December 5, 2001, Respondent Cannon failed to have adequate and qualified staff to ensure the proper operation of Respondent Newcomb's child development program.⁶ Because the Government deems this violation to be "arguably redundant" in light of the charged violations of 29 DCMR §§ 316.1 and 316.2, and because Respondent Canon no longer serves as director of Respondent Newcomb, the Government has recommended that the authorized fine for this violation be suspended.

⁶ For purposes of Title 29 Chapter 3, a child development program is defined as follows: "a program responsive to the stages of physical, emotional, social, and intellectual growth and behavior of infants or children." The proper operation of such a program necessarily requires compliance with applicable federal and District of Columbia law, including those relating to the maintenance of prescribed group size and staff-child ratios. *See* 29 DCMR §§ 306.1 and 316.

III. Conclusions of Law

1. Respondents violated 29 DCMR 317.10 at the 333 H Street, N.E. facility on November 27, 2001. A fine of \$100 is authorized for this violation, which, in light of Respondents' prior violation, may be increased to \$200. *See* 16 DCMR §§ 3201.1(c)(2) and 3222.2(d).⁷ The Government has sought dismissal of the repeat-offender enhancement for this charge. Based upon the representations of the parties regarding the settlement of this matter and the recommendation of the Government, the fine for this violation shall be \$100.
2. Respondents violated 29 DCMR 316.2 at the 333 H Street, N.E. facility on December 5, 2001. A fine of \$500 is authorized for this violation. *See* 16 DCMR 3222.1(i). Based upon the representations of the parties regarding the settlement of this matter and the recommendation of the Government, the authorized fine for this violation shall be suspended.
3. Respondents violated 29 DCMR 316.1 at the 333 H Street, N.E. facility on December 5, 2001. A fine of \$500 is authorized for this violation, which, in light of Respondents' prior violation, may be increased to \$1,000. *See* 16 DCMR §§ 3201.1(b)(2) and 3222.1(i). The Government has sought dismissal of the repeat-

⁷ The Government has noted that Respondents' prior violations of 29 DCMR §§ 317.10 and 316.1 occurred in a different facility. Repeat offender status under the Civil Infractions Act of 1985's schedule of fines does not turn on where the violation occurred; it turns on who committed the violation and when that prior violation occurred. *See* 16 DCMR 3201. In this case, Respondents herein are the same respondents found liable for the aforementioned violations in *DOH v. Newcomb Child Development Center*, OAH No. I-00-40096 (Final Order, June 28, 2000). In addition, the prior violations were found to have occurred on April 26, 2000, which is within the same three-year period, *i.e.*, January 1, 2000 to December 31, 2002, as the current violations. *See* 16 DCMR §§ 3201.2 and 3201.3; *DOH v. Newcomb Child Development Center*, OAH No. I-00-40096 at 3. In turn, Respondents were properly charged as repeat offenders in this matter.

offender enhancement for this charge. Based upon the representations of the parties regarding the settlement of this matter and the recommendation of the Government, the fine for this violation shall be \$500.

4. Respondents violated 29 DCMR 315.2(a) at the 333 H Street, N.E. facility on December 5, 2001. A fine of \$50 is authorized for this violation. *See* 16 DCMR 3222.3. Based upon the representations of the parties regarding the settlement of this matter and the recommendation of the Government, the authorized fine for this violation shall be suspended.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondents' request to amend their pleas of Deny to the charges set forth in Notice of Infraction (No. 00-40443) to Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(3) is hereby **GRANTED**; and it is further

ORDERED, that the Government's request to dismiss the repeat offender fine enhancements as set forth in 16 DCMR §§ 3201.1(b)(2) and 3201.1(c)(2) for the charged violations of 29 DCMR §§ 316.1 and 317.10, respectively, is hereby **GRANTED**; and it is further

ORDERED, that Respondents Newcomb Child Development Center and Andrea Cannon are **LIABLE** for violating the provisions of 29 DCMR 317.10 as charged in the Notice of Infraction (No. 00-40443); and it is further

ORDERED, that Respondents Newcomb Child Development Center and Andrea Cannon are **LIABLE** for violating the provisions of 29 DCMR 316.1 as charged in the Notice of Infraction (No. 00-40443); and it is further

ORDERED, that Respondents Newcomb Child Development Center and Andrea Cannon are **LIABLE** for violating the provisions of 29 DCMR 316.2 as charged in the Notice of Infraction (No. 00-40443); and it is further

ORDERED, that Respondents Newcomb Child Development Center and Andrea Cannon are **LIABLE** for violating the provisions of 29 DCMR 315.2(a) as charged in the Notice of Infraction (No. 00-40443); and it is further

ORDERED, that Respondents, who are joint and severally liable, shall pay a fine in the total amount of **SIX HUNDRED DOLLARS (\$600)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **04/05/02**

Mark D. Poindexter
Administrative Judge